

13-12-3 Refiners or distributors -- Unlawful practices -- Marketing agreements with dealers.

No refiner or distributor, directly or indirectly or through any office, agent, or employee, shall engage in any of the following practices:

- (1) requiring a dealer, at the time of entering into a marketing agreement, to agree to a release, assignment, novation, waiver or estoppel which would relieve any person from any provision of this act;
- (2) prohibiting, directly or indirectly, the right of free association among dealers for any lawful purpose;
- (3) requiring a dealer to keep his retail outlet open for business for any specified number of hours per day, or days per week, unless those requirements are set forth in writing at the time of entering into the marketing agreement;
- (4) fixing or maintaining the price at which the dealer must sell products, or attempting to fix or maintain those prices, through any form of coercion whatsoever; provided, that nothing herein shall be construed to prohibit a distributor or refiner from suggesting prices or counseling with dealers concerning those prices;
- (5) requiring a dealer to use or utilize any promotion, premium, coupon, give-away, sales promotion or rebate in the operation of the business; provided that nothing herein shall be construed to prohibit a dealer from participating financially in a promotion, premium, coupon, give-away, sales promotion or rebate sponsored by the distributor or refiner if agreed to voluntarily by the parties;
- (6) terminating, canceling or failing to renew any marketing agreement without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew the dealer at least 90 days in advance of such termination, cancellation, or failure to renew, except:
 - (a) where the alleged grounds are voluntary abandonment by the dealer of the marketing agreement relationship in which event the aforementioned written notice shall be given five business days in advance of such termination, cancellation, or failure to renew; and
 - (b) where the alleged grounds are caused by the conviction of the dealer or distributor in a court of competent jurisdiction of a criminal offense directly related to the business conducted pursuant to the marketing agreement, or the bankruptcy of the dealer or distributor, in which event the aforementioned termination, cancellation, or failure to renew may be effective immediately following such conviction or bankruptcy;
 - (c) where the alleged grounds are:
 - (i) failure of the dealer to substantially comply with the requirements of the marketing agreement;
 - (ii) action of the dealer fraudulently advising members of the motoring public of the necessity for unneeded automotive repairs, parts or accessories;
 - (iii) action of the dealer fraudulently representing either expressly or impliedly the trade mark or brand of product being sold by the dealer;
 - (iv) failure of the dealer to maintain the premises in a sufficiently clean and healthful manner to avoid constituting a nuisance to members of the motoring public or adjoining property owners as determined by the local board of health authority;
in which event the distributor shall provide the dealer with written notice of his intent to terminate, cancel or fail to renew, following which the dealer shall be allowed 10 days in which to comply, correct or respond to said allegations before further action can be taken by the distributor.

Amended by Chapter 378, 2010 General Session

